Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

United States Supreme Court

OCTOBER TERM, 1975

No. 75-1158

NATIONAL SOCIALIST WHITE PEOPLE'S PARTY, *et al*,
Appellants

vs.

SOUTHERN NEW ENGLAND TELEPHONE COMPANY, *et al*
Appellees

MOTION TO AFFIRM

Robert E. Beach, Jr.
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New Haven, Connecticut 06525

Counsel for Remaining Appellee

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The appellee Walsh moves to affirm pursuant to Rule 16(1)(c) of the Supreme Court Rules. The appellee urges that the question on which the decision of the case depends is so insubstantial as not to need further argument.

The three-judge District Court, whose opinion in this case appears at pages 18-25 in the appendix to the appellants' jurisdictional statement, decided only that the statute in dispute, §53-37 of the Connecticut General Statutes, did not by its terms apply to the activity of the appellants. That court recognized that *Beauhearnais v. Illinois,* 343 U.S. 250 (1952), may no longer represent the views of this Court, but ruled that, because the appellants' activity was not proscribed by the statute, it did not have to reach the issue of the continued validity of *Beauhearnais.*

The sole question presented is whether the District Court erred in denying declaratory and injunctive relief. It should be noted that neither the remaining appellee Walsh nor the State of Connecticut has any intention of attempting to apply the statute to non-commercial speech. In the present posture of the case, then, no concrete dispute exists. *Golden v. Zwickler,* 394 U.S. 103 (1969).

The District Court recognized that the Connecticut courts would interpret the statute to apply only to commercial speech. In so doing, it acted consistently with *Time, Inc. v. Hill,* 385 U.S. 374, 397 (1967) and *Broadrick v. Oklahoma,* 413 U.S. 601 (1973). As in *Hill* and *Broadrick,* the court below recognized that a narrow construction of a possibly ambiguous statute may be necessary in order to obviate consideration of constitutional claims and that Connecticut courts have adequately narrowed the application of the statute.

The appellants rely to a great extent on *Gooding* v. *Wilson,* 405 U.S. 518 (1972). Even *Gooding,* however, recognized that

if a statute were interpreted sufficiently narrowly, federal review would be unnecessary. 405 U.S. at 524-27. Perhaps more importantly, this case presents the converse of *Gooding* in that here the statute has been constructed so that the appellants' conduct falls outside the proscription.

In conclusion, the appellee Walsh respectfully requests that the decision of the three-judge court be summarily affirmed.

Respectfully submitted,
JOSEPH WALSH

By .....
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CERTIFICATION OF SERVICE

I certify that on this, the 4th day of March, 1976, copies of the motion to affirm were mailed, postage prepaid, to: Frank Cochran, Esq., Connecticut Civil Liberties Union Foundation, Inc., 57 Pratt St., Hartford, Conn. 06103; Donald R. Holtman, Esq., 4 North Main St., West Hartford, Conn. 06107; James Curtin, Esq., 227 Church St., New Haven, Conn. 06510; Joseph Lynch, Esq., 25 Lewis St., Hartford, Conn.; Thomas Cotter, Esq., 1167 Park Avenue, Bridgeport, Conn.; and to Daniel Schaefer, Esq., 30 Trinity St., Hartford, Conn.

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Robert E. Beach, Jr., Esquire